

ZONING BOARD OF APPEALS
MEETING MINUTES
December 9, 2014
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present:

Rick Barnes	James Moreno
Deland Davis	Carlyle Sims
Greg Dunn	Becky Squires
Samuel Gray	John Stetler

Staff Present: Marcel Stoetzel, Assistant City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: Letter of support from NPC #9 Chairperson, Ms. Linda Morris

Mr. John Stetler, Chairperson stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.

OLD BUSINESS: None

NEW BUSINESS:

A. Zoning Variance Appeal #Z-03-14:

Petition from Edward & Debbie Finch, 12565 Perry Road, Battle Creek, MI 49015, requesting a dimensional variance to allow an accessory building to be built with a mid-peak height of 16.6 ft. where only a 14 ft. is allowed for property located at 12565 Perry Road.

Mr. Glenn Perian stated appeal #Z-03-14 is a petition from Edward and Debbie Finch seeking approval of a Dimensional Variance to construct an accessory building 16.5' tall in an R-1R zoning district. The total overall height of the proposed accessory building is 19'2" with 14' sidewalls; however, Chapter 1230.06 defines the height of building as the mean level between the eaves and the ridge of a gable roof making the height of this particular accessory building at 16.5' by definition. All other ordinance requirements will be met for this proposed project. Stated that based on the application submitted, Planning Staff is recommending denial of appeal #Z-03-14 based on the following findings and those listed in the staff report.

- A) Staff finds that practical difficulty does not exist as applied to this specific building project. Chapter 1286 of the Planning and Zoning Code specifically states that accessory buildings shall not exceed 14' in height, and in this case, the appellant can comply with the code.
- B) Staff does not believe that the practical difficulty is exceptional and peculiar to the subject parcel of land and the conditions associated with the property generally does exist throughout the city. We believe the case is based on ownership of a motorhome and not any unique features of the land.
- C) Staff believes that if the variance is granted the intent of the ordinance will be altered and we are not convinced that the subject property is unique in any way.

Mr. Perian stated for these reasons stated and those listed in the staff report they are recommending denial of appeal Z-03-14.

Mr. Edward Finch, 12565 Perry Road, Battle Creek, MI came forward to speak stated they just moved to this location a few months ago and are here today requesting a 2.6 ft. in additional height variance for a new pole building, because of the air conditioner on top and would need 14 ft. side walls. Stated it would not disrupt the neighborhood as it sits back 400 ft. from the front property line and is asking because of the need to store and protect their motor-home. Said they moved there from Emmett Township and was not aware when they purchased this property that it was not allowed in the City of Battle Creek limits; noted they have provided written approval with signatures from their neighbors noting they have no objections.

Mr. Deland Davis asked Mr. Finch if there was any practical difficulty for him and that the board need to abide by rules and guideline they go by to approve a variance would be related with the characteristics of land or uniqueness to his property, and not a special conditions of the property owner. Said he did not see anything unusual with the land and that persons have a reason for wanting, but he looks at what it is about the property as to why it is needed.

Mr. Finch stated that the reason for the height for the garage door opening is to drive through as it is needed to be higher in order for it to fit inside.

Mr. Davis noted this problem is with the motor-home and not with the property itself. Mr. Finch stated he would need to move if it were not allowed and feels zoning variance is for those items that might improve the appearance in the neighborhood etc. Said this request would not cause a bad visual for the area as it would sit to the rear of the property and it is needed for the storage of their motor-home.

Mr. Carlyle Sims asked Mr. Glenn Perian regarding other accessory buildings that had been approved on Sonoma Road and if he remembered what had been approved. Mr. Perian stated a few were request for additional square footage which was before the ordinance had been amended to allow them to be 1,500 sq. ft.

Mr. Greg Dunn asked the applicant if he had received a copy of the staff report. Mr. Finch stated yes. Mr. Dunn read page 2 of the report regarding "Practical Difficulty" being a mere inconvenience noting a reason not to approve a variance and that the rules do not allow them to approve based on those findings. Stated it has to be exceptional and peculiar to the subject parcel of land and cannot be self-imposed or the result of an earlier action by the applicant and as Mr. Davis stated the rules tie their hands and need to have some specific reasons to grant a variance.

Mr. Finch stated it would be an inconvenience as he has a few handicapped children that they do things for and are ADHD with different handicaps. Said it would be an inconvenience to not have it at their home and not allow them to be able to clean the motor-home from a trip more easily. Said it would not hurt the community by allowing as they are located out in the country with two acres and feels 2.5 ft. is not much of a request and there is several grandfathered in and already built with a new construction two doors down being built that is attached with 16 ft. walls.

Mr. Greg Dunn stated unfortunately having others in the area does not allow them to consider as a reason to approve of this request. Mr. Finch is just trying to express his needs here today and was not thinking when he purchased this property that he could not build what he had already at his former home.

Mr. John Stetler asked if there was any further discussion, seeing none he would entertain a motion.

MOTION WAS MADE BY MS. BECKY SQUIRES IN FAVOR THE APPELLANT TO APPROVE APPEAL #Z-03-14 TO ALLOW A DIMENSIONAL VARIANCE TO BUILD AN ACCESSORY BUILDING WITH A MID PEAK HEIGHT OF 16.6 FT. WHERE ONLY A 14 FT. IS ALLOWED FOR PROPERTY LOCATED AT 12565 PERRY ROAD; SECONDED BY MR. DELAND DAVIS.

Discussion:

Mr. Greg Dunn stated he is in agreement with the staff report and they can only approve a variance based on the ordinance and cannot find a practical difficulty.

Mr. Deland Davis stated he is in agreement with Mr. Dunn and cannot decide based on how the property is zoned and if so everyone would want them larger, etc. and need to decide based on the zoning.

Mr. Carlyle Sims stated he would like to stick with the ordinance and still want to know about the other properties that were approved on Sonoma Rd. and Beckley Rd. and if so how can they deny this request.

Mr. John Stetler stated they need to approve variances on a case-by-case basis.

Mr. Greg Dunn stated the some of the others were approved based practical use of the land, the grade of the land, etc. and had been done before the ordinance had been changed.

Mr. Deland Davis stated he remembers a farm on Sonoma Rd. a few years back that had a foundation left and was determined to be grandfathered and had been allowed because the foundation was already there.

Mr. Greg Dunn stated he remembers another garage that had been allowed that was to the front of the property because in the rear of the lot it had a severe slope and the front was the only location they could build because of the contours of the property.

Ms. Becky Squires said she is struggling with this property and in looking at this parcel she questions the zoning of the land as it goes back far (653 ft.) and asked staff to look at things like this before they change some of the zoning rules; as she agrees with the appellant; but unfortunately they need to follow the law of which she disagrees with in this case.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ONE IN FAVOR (BARNES); SEVEN OPPOSED (DAVIS, DUNN, GRAY, MORENO, SQUIRES, SIMS, AND STETLER), MOTION DENIED

Chairman Stetler stated the appeal for a variance request has been denied and they have an option to appeal to the Circuit Court and thanked the applicant for coming before the board.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE NOVEMBER 18, 2014 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. JAMES MORENO.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.

COMMENTS BY THE PUBLIC:

Mr. David Nelson, 493 Potters Drive, Battle Creek, MI, stated he had moved from the north-side of town and had not spoken regarding this appeal as it did not pertain to him. Stated he had been before the Zoning Board, Planning Commission and City Commission in the past and won some and lost some; have always maintained the integrity of the zoning ordinance however it is written to urge the limiting the variance approvals. Mr. Nelson spoke as a citizen regarding support of decision of the board and the board should feel good regarding their decision.

COMMENTS BY THE MEMBERS / STAFF:

Mr. Deland Davis wished everyone a Merry Christmas and a Happy New Year.

Mr. Greg Dunn stated he wished everyone the same and said regarding the comments just made by the public he feels the ZBA has come a long way in terms of taking their responsibilities seriously to defend the ordinances and have seen a strong adherence to the view of defending the ordinances and think the appeals process should be rarely used and personally think they should only happen when there is substantial reason for the appeal. Said that ZBA members do a good job and take their responsibilities seriously and Mr. Nelson's comments did not fall on deaf ears.

Mr. John Stetler stated a number of members on this board have taken a number of hours of training on their own time and are proud of the board members.

Mr. Greg Dunn stated not to mention the time to drive to each location and read the paper work and understand the issues.

ADJOURNMENT: Meeting was adjourned at 4:30 P.M.

Submitted by: Leona A. Parrish, Administrative Assistant, Planning Department